



# **MONTANA LEGISLATIVE BRANCH**

## **Legislative Fiscal Division**

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**Legislative Fiscal Analyst**  
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DATE: June 4, 2004

TO: Legislative Finance Committee

FROM: Harry Freebourn

RE: District Courts Statewide Assumption Project

### **PURPOSE**

The purpose of this report is to update the Legislative Finance Committee (LFC) on significant unfavorable budget variances in the District Courts Statewide Assumption Project (the "District Court Assumption"). As discussed in this report, there has been no significant change in this situation since the March 2004 LFC report and therefore, it is apparent that the Judiciary will need supplemental funding during the 2005 biennium.

### **BACKGROUND**

The Fifty-seventh Legislature approved SB 176, which mandated that the state fund Montana's District Courts with appropriations from the general fund beginning July 1, 2002. This bill made all District Courts in the state part of the Judicial Branch of state government. The Judiciary assumed the responsibility for oversight and administration of 22 judicial districts with approximately 245 FTE. Montana's counties previously funded these costs and were partially reimbursed by the state through a reimbursement program. District Court Assumption did not include the costs of the clerks of court and related employee expenses.

### **FIXED VS VARIABLE COSTS**

The fiscal 2004 budget for District Court Assumption is \$18.4 million. This budget is segregated into fixed and variable cost components. The fixed cost budget is \$11.8 million and the variable cost budget is \$6.6 million. Section 61 of SB 176 described fixed costs as those that are not variable with caseload. These costs include the salaries of the 245 FTE and related operating costs. Variable costs are those that do vary with caseload. These costs include: 1) public defender costs for indigent defense; 2) costs for court appointed special advocates and Guardian ad Litem (CASA/GAL); and 3) other costs that do not fit within the aforementioned programs such as court reporter expenditures, jury fees, travel, and witness costs.

Public defender costs are the most significant part of the variable costs representing about 82 percent of the total. These costs are comprised of certain payments to county managed public defender offices, payments made to private attorneys for public defender services, medical evaluations for individuals accused of a crime, transcript fees, private investigator services, and juror and witness fees. CASA/GAL costs represent about ten percent of the total costs while other costs comprise the remaining eight percent.

## **Current Situation**

Based upon current and projected expenditures through the remainder of fiscal 2004, the Judiciary predicts that it will experience an unfavorable budget variance of approximately \$3.4 million. Of the total variance, the fixed cost budget for personal services is predicted to have a budget variance of \$0.5 million while the variable budget is predicted to have a variance of \$2.9 million.

The Judiciary expects that it may be able to partially mitigate these variances in two ways. First, they believe that \$0.5 million can be saved in the operating expenditure area of the fixed cost budget and that this savings can fully offset the variance in personal services. Second, they expect to use \$1.0 million in 2003 biennium general fund reversions as approved in a language appropriation for the 2005 biennium.

The Legislative Fiscal Division (LFD) believes that it will be a challenge to save 42 percent of the total operating budget to fully offset the variance in the personal services area. In addition, the use of reversion amounts is only a short-term solution to a long term funding issue. If these unfavorable variances are not permanently mitigated, it is reasonable to expect that they will be about the same in fiscal 2005. Therefore, the total potential overrun for the biennium is between \$4.8 and \$5.8 million.

## **Reasons For the Unfavorable Budget Variances**

There are probably a number of reasons causing the budget variances in this program. However, the LFD is not able to report information at this time that is significantly different than it reported at the March LFC meeting. It is difficult to precisely identify why the variances exist or where they are being created because budgets are not set up to allow for this type of analysis.

Some potential reasons for the unfavorable variances:

1. Approximately 31 percent, or \$0.9 million, of the \$2.9 million variance in the variable budget is because the budget for fiscal 2004 is \$0.9 million less than it was for fiscal 2003. Therefore, for this budget to be set less than last year's expenditures, one must assume either that the courts' caseload is decreasing year over year or that the severity of the cases is becoming less. The total budget of \$18.4 million was the same in fiscal 2003 and 2004. The fixed budget was increased by \$900,000 or 8.3 percent between fiscal 2003 and 2004. The LFD cannot present an explanation at this time and is researching this issue. Please refer to Table 1.

Table 1 Fiscal 2003 Expenditures Compared to Fiscal 2004 Budget				
Dollar Amounts in Millions				
	Fiscal 03 Expenditures	Fiscal 04 Budget	Dollar Inc (Dec)	Percent Inc (Dec)
1 Personal Services	\$9.9	\$10.6	\$0.7	7.1%
2 Operating Expenses	<u>1.0</u>	<u>1.2</u>	<u>0.2</u>	20.0%
3 Total Fixed	\$10.9	\$11.8	\$0.9	8.3%
4 Total Variable	7.5	6.6	-0.9	-12.0%
5 Grand Total	<u>\$18.4</u>	<u>\$18.4</u>	<u>\$0.0</u>	<u>0.0%</u>

2. Fees paid to court appointed attorneys to provide public defender services were set at a maximum rate of \$60.00 per hour. It appears that a significant number of attorneys' fees migrated to this maximum rate. During the last LFC meeting the LFD reported that the Judiciary has paid 182 different attorneys for public defender services during fiscal 2004.
3. Total caseload and the caseload for criminal cases, which is the most costly type, is increasing year over year. Total caseload increased from 32,918 in fiscal 2002 to 35,053 in fiscal 2003 and is in-line to increase to 37,331 for fiscal 2004. Criminal caseload increased from 7,049 in fiscal 2002 to 7,456 in fiscal 2003 and is in-line to increase to 7,903 in fiscal 2004. Based on an average cost per case of \$214 developed using fiscal 2003 information, this increase explains about \$505,000 or 17 percent of the variance in the variable budget.
4. Personal services costs have risen by 7.1 percent when you compare the fiscal 2004 budget with the fiscal 2003 actual expenditures. Please refer to Table 1. However, if you compare the fiscal 2004 reforecast provided by the Office of the Court Administrator to the fiscal 2003 expenditures, these costs have increased by 12.1 percent. Please refer to Table 2.

Table 2 Fiscal 2003 Expenditures Compared to Fiscal 2004 Reforecast by OCA				
Dollar Amounts in Millions				
	Fiscal 03 Expenditures	Fiscal 04 Reforecast	Dollar Inc (Dec)	Percent Inc (Dec)
1 Personal Services	\$9.9	\$11.1	\$1.2	12.1%
2 Operating Expenses	<u>1.0</u>	<u>0.7</u>	<u>-0.3</u>	-30.0%
3 Total Fixed	10.9	11.8	0.9	8.3%
4 Total Variable	<u>7.5</u>	<u>9.5</u>	<u>2.0</u>	26.7%
5 Grand Total	18.4	21.3	2.9	15.8%
6 LDF Adjust Variable	<u>0.0</u>	<u>0.5</u>	<u>0.5</u>	N/A
7 Adjusted Total	<u>\$18.4</u>	<u>\$21.8</u>	<u>\$3.4</u>	18.5%

It is not yet clear if this cost is rising due to an increase in the number of FTE, an increase in the amount paid for labor, or some combination of both. The increase in this budget to cover personal services has made a significant contribution to the unfavorable variance in the variable budget. The LFD cannot present an explanation at this time and is researching this issue.

5. Budget reporting does not allow for an easy identification of the reasons for variances. Variable costs are not budgeted at the Judicial District level. The individuals that manage these districts have limited knowledge of the level of spending that is taking place within their jurisdiction. They can create expenditures; however, they do not have a budget to guide the level of expenditure. Budget reporting is also not at a level to easily identify variances for expenditures related to public defense, CASA/GAL, or other costs.

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